IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 16465 of 2004(S)

OA.545/2001 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **THE DEPUTY CHIEF ACCOUNTS OFFICER,**
   EMPLOYEES STATE INSURANCE CORPORATION,
   PANCHADEEP BHAVAN, KOTLA ROAD, NEW DELHI.

2. **THE REGIONAL DIRECTOR,**
   (ADMINISTRATION BRANCH) ESI CORPORATION,
   REGIONAL OFFICE, PANCHADEEP BHAVAN,
   THRISSUR-20.

3. **THE DEPUTY DIRECTOR (ADMINISTRATION),**
   E.S.I.CORPORATION, REGIONAL OFFICE,
   THRISSUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR.

RESPONDENTS:
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1. **M.A.GEORGE, MALAYATTIL HOUSE,**
   PUDUKKAD, TRICHUR.

2. **V.CHANDRACHOODAN, KORAPPATH HOUSE,**
   CHIYYARAM P.O., TRICHUR.

3. **SMT.MARY ISSAC, 'MERRY DALE',**
   NELLENKARA, NETTISSERY P.O.,
   TRICHUR DISTRICT.

prv.

W.P.(C). NO.16465/2004:

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4. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS, NEW DELHI.

BY ADV. SRI.V.N.RAMESAN NAMBISAN FOR R1 TO R3, SRI.S.PRASANTH, SCGSC FOR R4.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

W.P.(C). NO.16465/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE O.A. NO. 545/01 WITH ANNEXURES.

EXT.P.2: COPY OF THE REPLY STATEMENT AND ANX.R1 (1) & R1 (B).

EXT.P.3: COPY OF THE ORDER DT. 05/02/2004 IN O.A. 545/01.

EXT.P.4: COPY OF THE ORDER DT. 15/10/1999 IN C.A.T. IN REPORTED IN 2000 (1) A.T.J.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR,

&

T.R.RAMACHANDRAN NAIR, JJ.

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WP(C).No. 16465 of 2004-S.

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Dated this the 5th day of September, 2007.

J U D G M E N T

Balakrishnan Nair, J.

The petitioners challenge Ext.P3 order of the Central Administrative Tribunal allowing O.A.No.545 of 2001. The brief facts of the case are the following:

2. The applicants in the O.A. retired from service on the after noon of 31.3.1995. The gratuity payable to the employees who retired from service on or after 1.4.1995 has been revised by the Government. The petitioners claimed that they should be treated as persons who retired from service with effect from 1.4.1995 and therefore claimed payment of DCRG, which was revised with effect from 1.4.1995. Their claims were rejected. Challenging those rejection orders they approached the Central Administrative Tribunal. The Tribunal relying on a Full Bench decision of the CAT, Bombay Bench reported in 2000(1) ATJ 1 and other decisions upheld the claim of the

petitioners. It was held that they became retirees only with effect from 1.4.1995 and therefore are entitled to get the DCRG at the revised rate. The respondents in the OA challenge the said order in this writ petition.

3. It would appear that the point raised by the writ petitioners is covered against them by the decision of this Court in *Union of India v. George* (2003(3) KLT 387). But the learned counsel for the petitioners contended that the said decision cannot be made applicable to the facts of this case as the Division Bench has failed to consider the impact of Rule 56(a) of the Fundamental Rules. The learned counsel also relied on the decision of the Apex Court in *S.Banerjee v. Union of India* (1990 SC 285). He also referred to the decision of the Apex Court in *Union of India v. P.N.Menon* (1994 SC 2221).

4. On the other hand, the learned counsel for the applicants before the Central Administrative Tribunal who are the respondents herein submitted that the point raised by the petitioners is squarely covered by the aforementioned decision in Union of India v. George.

5. The Division Bench of this Court was interpreting the applicability of the revised pension rules which were introduced with effect from 1.1.1996. The Government servants involved in that case were those, who retired from service on 31.12.1995. The Division Bench held that they worked

on 31.12.1995 and drew salary for the said day. They became pensioners at the midnight, that means only with effect from 1.1.1996. Therefore, they are entitled to get the revised pensionary benefits. The learned counsel for the petitioners herein pointed out that, in that decision Rule 56(a) was not considered. Rule 56(a) specifically provides that the retirement takes effect in the afternoon of the last day of the month which the Government servant attains the age of sixty years. The decision of the Division Bench which considered when an employee became a pensioner, can have no application while deciding when an employee became a retiree, it is contended. Rule 56 (a) reads as follows:

> **"56(a). Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:**
>
> **Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.**
>
> **Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.**
>
> **Or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years."**

6. We feel that the distinction sought to be drawn by the learned counsel for the petitioners is of no consequence. There is no distinction between a retiree and a pensioner. Going by Rule 56(a) also, we are of the view that the Government servants become retiree only with effect from the beginning of the next day that is only at the midnight. So, we are of the view that the Division Bench decision in Union of India v. George squarely covers the present case. The decision in Banerjee's case relied on by the petitioners was specifically referred to by the Division Bench. We also went through the said decision. We find that it was a case where an Officer of the Supreme Court was granted voluntary retirement with effect from 1.1.1996. We feel that the decision in the said case has no application to the facts of this case. The next decision relied on by the learned counsel for the petitioners is Union of India v. P.N.Menon. It is concerned with the validity of the fixation of a cut of date. Special reference is invited to para.14 of the said judgment. In that case it is observed that the persons who retired from service on 31st of December cannot get the benefit of the revised scale introduced with effect from the 1st January of the next year. The point raised and decided in that case is whether the fixation of a cut of date is valid or not. The point that arises for decision in the present case is not the point that was considered and decided in that case. A decision is an authority for what is decided in it and

not for what logically flows from it. So, we are of the view that the said decision will not in any way help the petitioners.

7. Going through the decision of the Division Bench in Union of India v. George, we are of the view that the said decision is squarely applicable to the points raised in this case. We are in respectful agreement with the view taken by the Division Bench in that case.

In the result, the writ petition fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-